



BILLING CODE 3510 DS P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-863]

Honey from the People's Republic of China: Preliminary Results of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: As discussed below, the U.S. Department of Commerce ("the Department") preliminarily determines that Dongtai Peak Honey Industry Co., Ltd. ("Peak") failed to cooperate to the best of its ability and is, therefore, applying adverse facts available ("AFA"). If these preliminary results are adopted in the final results of review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR").

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

Case Timeline

On January 31, 2012, the Department published in the Federal Register a notice of initiation of an administrative review of the antidumping duty order on honey from the People's

Republic of China (“PRC”) covering the period December 1, 2010, through November 30, 2011.¹

On March 2, 2012, the Department issued an antidumping duty questionnaire to Peak.² On March 23, 2012, Peak responded to Section A of the Department’s questionnaire.³ On April 9, 2012, Peak submitted a request for a one-day extension of the deadline to file its response to Sections C and D of the Department’s questionnaire, less than 6 minutes before the deadline,⁴ which would make the new deadline April 10, 2012. When the Department granted Peak’s extension request, the Department advised Peak to file any future extension requests as soon as it suspects additional time may be necessary.⁵ On April 9, 2012, Peak responded to Sections C and D of the Department’s questionnaire.⁶ On April 3, 2012, the Department issued Peak a supplemental Section A questionnaire with a deadline of April 17, 2012.⁷ Peak did not submit a response nor request an extension by April 17, 2012. Instead, on April 19, 2012, Peak submitted a request for an extension of 10 days, which would have made the new due date April 27, 2012. On April 20, 2012, the American Honey Producers Association and Sioux Honey Association (collectively “Petitioners”) submitted an objection to the untimely extension request by Peak.⁸ On April 24, 2012, Peak submitted a rebuttal to Petitioners Objection to Untimely Extension

¹ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 77 FR 4759 (January 31, 2012) (“Initiation Notice”).

² See Letter from Catherine Bertrand, Program Manager, Office 9, to Peak, “Honey from the People’s Republic of China (“PRC”): Non-Market Economy Questionnaire” (March 2, 2012).

³ See Letter from Peak to the Secretary of Commerce regarding Section A Response (March 23, 2012).

⁴ See Memo to the File from Kabir Archuleta, International Trade Analyst, Office 9, “IA ACCESS Submission Confirmation for Dongtai Peak Honey Industry Co., Ltd., Section C and D Questionnaire Response Extension” dated concurrently with this notice.

⁵ See Memo to the File from Kabir Archuleta, International Trade Analyst, Office 9, “Dongtai Peak Honey Industry Co., Ltd., Questionnaire Extension” (April 9, 2012) (“April 9 Extension Memo”).

⁶ See Letter from Peak to the Secretary of Commerce regarding Section C and D Response (April 9, 2012).

⁷ See Letter from Catherine Bertrand, Program Manager, Office 9, to Peak regarding Supplemental Section A Questionnaire (April 3, 2012) (“Peak Supplemental Section A”).

⁸ See Letter from Petitioners to the Secretary of Commerce regarding objection to extension request by Peak (April 20, 2012) (“Petitioners Objection to Untimely Extension Request”).

Request.⁹ On April 27, 2012, Peak requested a second extension of one day, until April 28, 2012, and submitted its supplemental Section A response after the close of business on April 27, 2012. On May 22, 2012, the Department rejected, and removed from the record, both of Peak's untimely filed extension requests and its untimely filed supplemental Section A response pursuant to 19 CFR 351.302(d).¹⁰ On April 16, 2012, Petitioners withdrew their request for an administrative review for all companies under review except Peak.¹¹ On May 1, 2012, the Department rescinded the review with respect to Anhui Honghui, Foodstuff (Group) Co., Ltd., Shanghai Bloom International Trading Co., Ltd., Shanghai Taiside Trading Co., Ltd., Tianjin Eulia Honey Co., Ltd., and Wuhan Bee Healthy Co., Ltd., as these companies have a separate rate. The Department stated it would address the disposition of the remaining withdrawn companies that do not have a separate rate in the preliminary results of this review.¹²

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

⁹ See Letter from Peak to the Secretary of Commerce regarding Peak's rebuttal to Petitioners' objection (April 24, 2012) ("Peak's Rebuttal to Petitioners' Objection").

¹⁰ See Letter from Catherine Bertrand, Program Manager, Office 9, to Peak "Tenth Administrative Review of Honey from the People's Republic of China ("PRC"): Rejection of Supplemental Section A Questionnaire Response and Removal from the Record" (May 22, 2012) ("Untimely Extension Request Rejection Letter"). On June 7, 2012, Peak filed a request for reconsideration of the Department's decision to reject Peak's submissions, which we are declining to do at this time. See Letter from Peak to the Secretary of Commerce regarding Peak's request for reconsideration of rejected documents (June 7, 2012).

¹¹ See Letter from Petitioners to the Secretary of Commerce "Petitioners' Partial Withdrawal of Request for Tenth Administrative Review" (April 16, 2012).

¹² See Honey From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review, 77 FR 25682 (May 1, 2012).

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department’s written description of the merchandise under the order is dispositive.

Withdrawal of Requests for Review

As stated above, on April 16, 2012, Petitioners withdrew their request for an administrative review for all companies under review except Peak. The Department previously rescinded those companies which had a separate rate and stated that we would address the disposition of the remaining withdrawn companies that did not have a separate rate at the preliminary results of this review.¹³ We note that the deadline to file a separate rate application, separate rate certification, or a notification of no sales, exports or entries, is 60 days after the initiation of the administrative review,¹⁴ which in this case was March 31, 2012. Therefore, as of April 1, 2012, the remaining companies under review that did not demonstrate eligibility for a separate rate effectively became part of the PRC-wide entity. Accordingly, while the requests for review of those companies were withdrawn by Petitioners on April 16, 2012, those withdrawn companies remain under review as part of the PRC-wide entity and the Department

¹³ See *id.*

¹⁴ See *Initiation Notice* 77 FR at 4759-4760.

will make a determination with respect to the PRC-wide entity at these preliminary results and the final results.¹⁵

Facts Otherwise Available

Section 776(a) of the Tariff Act of 1930, as amended (“the Act”), provides that the Department shall use facts otherwise available if necessary information is not otherwise available on the record of the antidumping proceeding. Specifically, section 776(a)(2) of the Act provides that where an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching its determination.

As explained above, the Department cautioned Peak in its April 9 Extension Memo with respect to timely extension requests, and advised Peak that the Department must be afforded adequate time to fully consider such requests. Further, we note that the instructions in the Section A supplemental questionnaire issued to Peak, which it failed to timely submit, stated that

¹⁵ Ahcof Industrial Development Corp., Ltd.; Alfred L. Wolff (Beijing) Co., Ltd.; Anhui Changhao Import & Export Trading; Anhui Honghui Import & Export Trade Co., Ltd.; Anhui Cereals Oils and Foodstuffs I/E (Group) Corporation; Anhui Hundred Health Foods Co., Ltd.; Anhui Native Produce Imp & Exp Corp.; APM Global Logistics (Shanghai) Co.; Baiste Trading Co., Ltd.; Cheng Du Wai Yuan Bee Products Co., Ltd.; Chengdu Stone Dynasty Art Stone; Damco China Limited Qingdao Branch; Eurasia Bee’s Products Co., Ltd.; Feidong Foreign Trade Co., Ltd.; Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen); Golden Tadco Int’l.; Hangzhou Golden Harvest Health Industry Co., Ltd.; Hangzhou Tienchu Miyuan Health Food Co., Ltd.; Haoliluck Co., Ltd.; Hengjide Healthy Products Co. Ltd.; Hubei Yusun Co., Ltd.; Inner Mongolia Altin Bee-Keeping; Inner Mongolia Youth Trade Development Co., Ltd.; Jiangsu Cereals, Oils Foodstuffs Import Export (Group) Corp.; Jiangsu Kanghong Natural Healthfoods Co., Ltd.; Jiangsu Light Industry Products Imp & Exp (Group) Corp.; Jilin Province Juhui Import; Maersk Logistics (China) Company Ltd.; Nefelon Limited Company; Ningbo Shengye Electric Appliance; Ningbo Shunkang Health Food Co., Ltd.; Ningxia Yuehai Trading Co., Ltd.; Product Source Marketing Ltd.; Qingdao Aolan Trade Co., Ltd.; QHD Sanhai Honey Co., Ltd.; Qinhuangdao Municipal Dafeng Industrial Co., Ltd.; Renaissance India Mannite; Shaanxi Youthsun Co., Ltd.; Shanghai Foreign Trade Co., Ltd.; Shanghai Hui Ai Mal Tose Co., Ltd.; Shanghai Luyuan Import & Export; Shine Bal Co., Ltd.; Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.; Sichuan Hasten Imp Exp. Trading Co. Ltd.; Silverstream International Co., Ltd.; Sunnice Honey; Suzhou Aiyi IE Trading Co., Ltd.; Suzhou Shanding Honey Product Co., Ltd.; Tianjin Weigeda Trading Co., Ltd.; Wanxi Haohua Food Co., Ltd.; Wuhan Shino-Food Trade Co., Ltd.; Wuhu Anjie Food Co., Ltd.; Wuhu Deli Foods Co. Ltd.; Wuhu Fenglian Co., Ltd.; Wuhu Qinshi Tangye; Wuhu Xinrui Bee-Product Co., Ltd.; Xinjiang Jinhui Food Co., Ltd.; Youngster International Trading Co., Ltd.; and, Zhejiang Willing Foreign Trading Co.

a response or extension request must be received by close of business on the day of the deadline or the Department may resort to the use of facts available.¹⁶ As noted above, Peak did not timely respond to the supplemental Section A questionnaire issued by the Department on April 3, 2012 and the Department rejected Peak's untimely filed extension requests and its untimely filed supplemental Section A response pursuant to 19 CFR 351.302(d).

We note that in Grobest, the Court of International Trade ("CIT" or the "Court") recently held that rejecting a separate rate certification ("SRC") that was three months late was an abuse of discretion because, inter alia, the certification had been submitted early in the proceeding, the respondent was diligent in attempting to correct the error, and the burden on the agency to consider the certification would have been minimal.¹⁷ The Court noted that the facts of that case suggested that the administrative burden of reviewing the SRC rejected by the Department would not have been great because the Department had granted the respondent company separate-rate status in the preceding three administrative reviews without needing to conduct a separate-rate analysis.¹⁸ Therefore, but for the untimeliness of its submission, the respondent would likely have received a separate rate in the segment in question, with minimal administrative burden imposed upon the Department, and, as a result of its rejected submission, was likely assigned an inaccurate and disproportionate margin.¹⁹ The CIT further held that, while the Department has discretion both to set deadlines and to enforce those deadlines by rejecting untimely filings, that discretion is not absolute and the Court will evaluate "on a case-by-case basis whether the

¹⁶ See Letter from Catherine Bertrand, Program Manager, Office 9, to Peak regarding Supplemental Section A Questionnaire (April 3, 2012), at 2.

¹⁷ See Grobest & I-Mei Industrial (Vietnam) Co., Ltd., v. United States, 815 F. Supp. 2d 1342, 1367 (CIT 2012) ("Grobest")

¹⁸ See id.

¹⁹ See Grobest, 815 F. Supp. 2d at 1366-1367.

interests of accuracy and fairness outweigh” the Department’s administrative burden and interest in finality.²⁰

In this case, the Department has considered Peak’s untimely requests for extension, and determined that Peak has not provided good cause for submitting its extension requests in an untimely manner. As noted by the Court in Grobest, the Department has the discretion to “set and enforce deadlines.”²¹ The Department’s regulations provide that the agency “may, for good cause, extend any time limit established by this part.”²² Parties requesting an extension are required to submit a written request “before the time limit specified” by the Department, and must “state the reasons for the request.” In its Supplemental Section A Extension Request Peak explained that it was requesting an extension of the deadline for filing its supplemental Section A response due to unexpected computer failures and difficulties communicating with management who were away on business.²³ However, Peak provided no explanation as to why it was unable to file the actual extension request in a timely manner prior to the deadline for its questionnaire response, as required by section 19 CFR 351.302(c).²⁴ This deficiency was also pointed out by Petitioners in their objection to Peak’s extension request: “...the request fails to explain in any manner why it was not filed prior to the deadline.”²⁵ In Peak’s Rebuttal to Petitioners’ Objection, Peak again failed to address this deficiency, merely reiterating that the Department’s regulations and long-standing policy allow it to extend any deadline for good cause, explaining that the “circumstances surrounding the unanticipated delay in the preparation of the Supplemental Questionnaire at issue were caused by unexpected computer failures and the

²⁰ See Grobest, 815 F. Supp. 2d at 1367.

²¹ See Grobest, 815 F. Supp. 2d at 1365.

²² See 19 CFR 351.302(b).

²³ See Peak’s Rebuttal to Petitioners’ Objection, at 2.

²⁴ See id.

²⁵ See Petitioners Objection to Untimely Extension Request, at 2.

difficulties in communicating with the management personnel who were traveling in remold areas for business.”²⁶ While the Department may extend deadlines, it does so “for good cause,” in accordance with 19 CFR 351.302(b). Because Peak did not provide any explanation for why it did not submit its extension request in a timely manner, the Department determined that Peak had not provided good cause pursuant to 19 CFR 351.302(b) for the Department to extend retroactively its deadline for the extension request and rejected Peak’s two untimely extension requests and its supplemental Section A response.²⁷

The Department set deadlines in this proceeding after careful consideration of the time and resources that were needed to complete a review of Peak’s sales during the POR. Peak’s U.S. sales have been found to be non-bona fide in two prior reviews,²⁸ a determination that requires careful consideration of the totality of circumstances, including: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis;²⁹ (6) as well as the business practices of the importer and U.S. customers.³⁰ The supplemental Section A questionnaire that Peak failed to timely submit would have provided information regarding Peak’s reported quantity and value, its separate rate status, structure and affiliations, sales process, accounting and financial practices, and merchandising. This information has proven vital to the Department’s prior non-bona fide analyses. Moreover, the Department requires a significant amount of time and effort to gather the necessary information,

²⁶ See Peak’s Rebuttal to Petitioners’ Objection, at 2.

²⁷ See Untimely Extension Request Rejection Letter, at 2.

²⁸ See Administrative Review of Honey from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, In Part, 75 FR 24880, 24881 (May 6, 2010); Honey from the People’s Republic of China: Final Rescission of Antidumping Duty Administrative Review, 77 FR 34343, 34344 (June 11, 2012) (“PRC Honey AR9 Final”).

²⁹ See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (“TTPC”).

³⁰ See New Donghua, 374 F. Supp. 2d at 1343-44.

consider the facts of the record, and provide interested parties with an appropriate period for comments and rebuttal comments. For example, in the ninth administrative review of this proceeding the Department issued its initial questionnaire to Peak in February 2011, and continued to request and receive supplemental questionnaire responses until December 13, 2011, just 10 days before the preliminary results were signed.³¹ In order to properly analyze and consider submissions from Peak and Petitioners, and provide an opportunity for interested parties to comment, the Department was required to extend both its preliminary and final results.³² The establishment of deadlines for submission of factual information in an antidumping duty review is not arbitrary. Rather, deadlines are specifically designed to allow a respondent sufficient time to prepare responses to detailed requests for information, and to allow the Department to analyze and verify that information, within the statutorily-mandated timeframe for completing the review. The Department recognizes that respondents may encounter difficulties in meeting certain deadlines in the course of any segment; indeed, the Department's regulations specifically address the requirements governing requests for extensions of specific time limits (*i.e.*, 19 CFR 351.302(c)). While the Department may extend deadlines when possible, and where there is good cause, here Peak submitted no explanation for why it was unable to submit its extension requests in a timely manner.

³¹ See Honey From the People's Republic of China: Preliminary Rescission of the Administrative Review, 77 FR 79, 80 (January 3, 2012) ("PRC Honey AR9 Prelim") ("While the Department continued to receive submissions from both Petitioners and {Peak} through December, we were unable to take submissions submitted on or after December 13, 2011, into consideration for these preliminary results due to the close proximity to statutory deadlines").

³² See Ninth Administrative Review of Honey From the People's Republic of China: Extension of Time Limit for the Preliminary Results, 76 FR 47238 (August 4, 2011) ("The Department requires more time to gather and analyze surrogate value information, and to review questionnaire responses and issue supplemental questionnaires."); Honey From the People's Republic of China: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review, 77 FR 11489 (February 27, 2012) ("The Department requires additional time to complete this review because the Department must fully analyze and consider significant issues regarding whether the respondent's sales were *bona fide*. Further, the Department extended the due date for submission of the rebuttal comments to the case briefs at the request of an interested party.").

As noted above, Peak, had previously requested an extension for its Section C and D response before the applicable deadline, albeit very close to that deadline, and the Department advised Peak at that time that extension requests must be made well before the applicable deadline.³³ Accordingly, it was important for Peak to provide the Department adequate notice that it required additional time to submit the supplemental Section A questionnaire response in the current administrative review. Rather than doing so, Peak submitted two untimely extension requests, without providing any explanation or “good cause” within the meaning of section 351.302(b), for why it was unable to submit an extension request in a timely manner. The Department notes that Peak did so despite being cautioned on at least two occasions that all extension requests must be submitted before the deadline for the requested information. Peak’s supplemental Section A response was submitted eleven days after the original deadline, without the Department having granted Peak’s two untimely extension requests.³⁴ Therefore, we rejected Peak’s supplemental Section A response as untimely pursuant to 19 CFR 351.302(d).³⁵ Furthermore, the Department's decision to reject the submissions at issue is consistent with the general practice of rejecting untimely filed questionnaire responses.³⁶ The Department establishes appropriate deadlines to ensure that its ability to complete the proceeding is not jeopardized. We note that the CIT has long recognized the need to establish, and enforce, time

³³ See April 9 Extension Memo.

³⁴ See Untimely Extension Request Rejection Letter at 1.

³⁵ See *id.* at 2.

³⁶ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine, 66 FR 50401 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 5; Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People’s Republic of China, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 82.

limits for filing questionnaire responses, the purpose of which is to aid the Department in the administration of the dumping laws.³⁷

Accordingly, because the record lacks a complete Section A response³⁸ from Peak, which has contained information vital to our analyses of this respondent in prior reviews, the Department finds that the information necessary to calculate an accurate margin is not available on the record of this review. Further, because we issued questions regarding Peak's separate rate status³⁹ to which Peak did not timely respond, Peak did not establish its eligibility in this segment of the proceeding for a separate rate. As a result, we preliminarily find Peak to be part of the PRC-wide entity. Because the entity, which includes Peak, did not cooperate to the best of its ability, the record lacks the requisite data that is needed to reach a determination.

Accordingly, the Department finds that the necessary information to calculate an accurate and reliable margin is not available on the record of this proceeding. The Department finds that because Peak, as part of the PRC-wide entity, failed to submit its response to the Department's Supplemental Section A questionnaire, the PRC-wide entity withheld the requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. On this basis, the Department finds that it must rely on the facts otherwise available to determine a margin for the PRC-wide entity in accordance with section 776(a) of the Act.⁴⁰

³⁷ See e.g. Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366, 1377 (CIT 2000); and Seattle Marine Fishing Supply, et al. v. United States, 679 F. Supp. 1119, 1128 (CIT 1998) (it was not unreasonable for the Department to refuse to accept untimely filed responses, where "the record displays the ITA followed statutory procedure" and the respondent "was afforded its chance to respond to the questionnaires, which it failed to do.")

³⁸ The supplemental questionnaire to which Peak failed to respond requested explanations and clarifying information regarding its quantity and value, separate rate status, structure and affiliations, sales process, accounting and financial practices, and merchandising. See Peak Supplemental Section A.

³⁹ See id., at 4-6.

⁴⁰ See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 69546 (December 1, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

Adverse Facts Available

Section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority . . . {the Department} . . . may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.”⁴¹ Adverse inferences are appropriate to “ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴² In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.⁴³

The Department determines that the PRC-wide entity, which includes Peak due to its failure to respond to all of the Department’s questionnaires, has failed to cooperate to the best of its ability in providing the requested information. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act, we find it appropriate to apply a margin to the PRC-wide entity based entirely on the facts available, and to apply an adverse inference.⁴⁴ By doing so, we ensure that the PRC-wide entity, which includes Peak, will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review.

The Department’s practice is to select an AFA rate that is sufficiently adverse as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner and that ensures that the party does

⁴¹ See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No., 103-316 at 870 (1994) (“SAA”).

⁴² See *id.*

⁴³ See section 776(b) of the Act.

⁴⁴ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity), unchanged in Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007).

not obtain a more favorable result by failing to cooperate than if it had cooperated fully.⁴⁵

Specifically, the Department's practice in reviews, when selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated.⁴⁶ The CIT and the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.⁴⁷ Therefore, we are assigning the PRC-wide entity, which includes Peak, a rate of \$2.63 per kilogram, which is the highest rate on the record of this proceeding and which was the rate assigned to the PRC-wide entity in the seventh administrative review of this proceeding, the most recent review that was not rescinded.⁴⁸

Corroboration

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be

⁴⁵ See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8911 (February 23, 1998); see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review: Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005), and SAA at 870.

⁴⁶ See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 15930, 15934 (April 8, 2009), unchanged in Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009); see also Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

⁴⁷ See, e.g., KYD, Inc. v United States, 607 F.3d 760, 766-767 (CAFC 2010) ("KYD"); see also NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation).

⁴⁸ See Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, In Part, 75 FR 24880, 24882 (May 6, 2010).

both reliable and relevant.⁴⁹ Secondary information is “{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 {of the Act} concerning the subject merchandise.”⁵⁰ Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated margins. Thus, in an administrative review, if the Department chooses, as AFA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin.⁵¹

The Department considers the AFA rate calculated for the current review as both reliable and relevant. On the issue of reliability, the adverse rate selected was calculated for another respondent, Anhui Native Produce Import & Export Corporation, during the sixth administrative review.⁵² No information has been presented in the current review that calls into question the reliability of this information. With respect to the relevance, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in Fresh Cut Flowers from Mexico, the Department disregarded the highest margin in that case as best information available (the predecessor to facts available) because the margin was based on

⁴⁹ See SAA at 870; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

⁵⁰ See SAA, H.R. Doc. No. 103-316 at 870 (1994) and 19 CFR 351.308 (d).

⁵¹ See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People’s Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part, 69 FR 55581 (September 15, 2004), and accompanying Issues and Decision Memorandum at Comment 18.

⁵² See Honey From the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 796 (January 8, 2009) (“PRC Honey AR6”).

another company's uncharacteristic business expense resulting in an unusually high margin.⁵³

This rate was assigned to the PRC-wide entity in a prior review which demonstrates its relevance to the PRC-wide entity. Furthermore, the selected AFA margin is based upon the calculated rate for another respondent in sixth administrative review of this proceeding, and thus reflects the commercial reality of a competitor in the same industry.⁵⁴ There is no information on the record to indicate that this rate is not relevant, as was the case in Fresh Cut Flowers from Mexico. For all these reasons, the Department finds that this rate is also relevant.

Given that the PRC-wide entity, which includes Peak, failed to cooperate to the best of its ability in this administrative review, it is appropriate to select an AFA rate that serves as an adequate deterrent in order to induce cooperation in the proceeding. The Federal Circuit held in KYD, that selecting the highest prior margin reflects "a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer knowing of the rule, would have produced *current* information showing the margin to be less."⁵⁵ Here, Peak did not produce current information in a timely manner, as noted above. On this basis, we find that selecting the highest calculated rate of this proceeding is sufficiently relevant to the commercial reality for the PRC-wide entity, which includes Peak. Furthermore, there is no information on the record of this review that demonstrates that this rate is uncharacteristic of the industry, or otherwise inappropriate for use as AFA. Based upon the foregoing, we determine this rate to be relevant.

⁵³ See Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review, 61 FR 6812, 6814 (February 22, 1996) ("Fresh Cut Flowers from Mexico") cited in Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734, 21737 (April 11, 2012).

⁵⁴ See PRC Honey AR6.

⁵⁵ See KYD, Inc. v. United States, 607 F.3d 760, 766 (Fed. Cir. 2010) citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (CAFC 1990).

As the \$2.63 per kilogram AFA rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we have assigned this rate as AFA to exports of the subject merchandise by the PRC-wide entity, which includes Peak.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists:

Manufacturer/Exporter	Margin (dollars per kilogram)
PRC-wide entity (which includes Dongtai Peak Honey Industry Co., Ltd.)	\$2.63

Briefs and Public Hearing

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, pursuant to the Department's e-filing regulations located at <https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf>. Requests should

contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we will calculate importer- (or customer-) specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we will calculate importer- (or customer-) specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific ad valorem rate is greater than de minimis, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR, pursuant to 19 CFR 351.212(b)(1).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be

the rate established in the final results of this review (except, if the rate is zero or de minimis, i.e., less than 0.5 percent, no cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of \$2.63 per kilogram; and, (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Paul Piquado
Assistant Secretary
for Import Administration

July 30, 2012 _____
Date

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